

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SUSAN DECUYPER)
v.)
) NO. 3-13-0850
AMY FLINN, et al.) JUDGE CAMPBELL
)

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket No. 57), Objections filed by the Plaintiff (Docket No. 58), Plaintiff's Motion for Leave to Amend (Docket No. 59), and a Response to the Objections filed by the Defendants (Docket No. 60).

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(3) and Local Rule 72.03(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections, the Response, Plaintiff's Motion and the file.

The Court agrees with the analysis in the Report and Recommendation as it relates to the Federal Wiretapping Act claims of Plaintiff's Amended Complaint;¹ provided, however, the Court modifies the recommended disposition to allow Plaintiff to amend her Amended Complaint as set forth in Docket Nos. 59 and 59-1. The Court should freely give leave to amend when justice so requires. Fed. R. Civ. P. 15.

Plaintiff's Proposed Second Amended Complaint sets forth specific examples of e-mails allegedly being ‘blocked, intercepted and held’ while the e-mail was “being transmitted to their [sic] intended recipients, and prior to the email being acquired by the electronic storage device.” Docket

¹ The Court also agrees with the reasoning of Judge Trauger in *Cardinal Health 414, Inc. v. Adams*, 582 F.Supp.2d 967 (M.D. Tenn. 2008), and the cases upon which she relies therein.

No. 59-1, ¶ 80.² Plaintiff's Motion for Leave to Amend (Docket No. 59) is GRANTED, and the Clerk is directed to file the Second Amended Complaint attached thereto (Docket No. 59-1).

In light of the filing of the Second Amended Complaint, Defendants' Motion to Dismiss (Docket No. 44) is DENIED as moot.

This case is referred back to the Magistrate Judge for customized case management and, specifically, to supervise discovery related to the Federal Wiretapping Act claims of the Second Amended Complaint.

IT IS SO ORDERED.

Todd Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

²

Such allegations point out the need for discovery on this issue.